

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
)
)
Plaintiff,)
)
)
v.) No. 3:08-CR-177
)
)
DANNY J. BURNETT,) (VARLAN/GUYTON)
)
)
Defendant.)
)

MEMORANDUM AND ORDER

This matter came before the undersigned for a competency hearing on May 20, 2009, following the Court's order [Doc. 9] that the defendant be committed for a mental evaluation of his competency to stand trial and sanity at the time of the offense. Assistant United States Attorney Kelly Ann Norris appeared as counsel for the government, and Attorney Kim A. Tollison appeared on behalf of the defendant, who was also present. The parties relied upon the ten (10) page Forensic Report prepared by Dr. Judith Campbell, Forensic Psychologist, as evidence of the defendant's competency to stand trial. Both parties stipulated to the report and relied upon it as the only evidence before the Court regarding the defendant's competency.

Based upon the information contained in the report, the Court finds that Defendant Burnett is mentally competent in that he is able to understand the nature and consequences of the charges and proceedings against him and to assist properly in the defense of the charges brought against him in this case. The parties' joint oral motion to determine competency is **GRANTED**, and the Court finds that the defendant is competent to proceed to trial.

At the conclusion of the competency hearing, the Court arraigned the defendant on

the Indictment [Doc. 7] and set a trial date of July 28, 2009, before the Honorable Thomas A. Varlan, United States District Judge. The Court notes that the parties moved for the defendant to undergo a mental evaluation at his initial appearance on December 3, 2008. The Court ordered that the defendant be sent for a mental evaluation before he was arraigned. The Court notes that a defendant's speedy trial clock does not begin to run until the defendant is arraigned on the charges in the indictment and enters a plea of not guilty. See United States v. O'Dell, 154 F.3d 358, 360 (6th Cir. 1998) (holding that the plain language of 18 U.S.C. § 3161(c)(1) requires the entry of a plea of not guilty to trigger the running of the seventy-day period), cert. denied, 526 U.S. 1029 (1999). Accordingly, the present defendant's clock did not begin to run until the May 20, 2009 hearing. Nevertheless, the Court finds that all time between the December 3, 2008 hearing and the May 20, 2009 competency hearing would also be fully excludable under the Speedy Trial Act as delay relating to an examination to determine the defendant's competency and delay relating to transportation to and from the facility at which he was evaluated, if the defendant's speedy trial rights had been affected by the lapse of time relating to his mental evaluation. See 18 U.S.C. § 3161(h)(1)(A), -(F). With regard to further scheduling in this case, the Court set a discovery cut-off of May 29, 2009. Pretrial motions must be filed on or before June 19, 2009. Responses are due on or before July 6, 2009. The parties are to appear before the undersigned for a pretrial conference on July 7, 2009, at 2:00 p.m. This date is also the reciprocal discovery deadline. The Court set a plea cut-off date of July 9, 2009.

Accordingly, it is **ORDERED** that:

- (1) The Court finds the defendant is competent to stand trial;
- (2) The parties' joint oral motion to determine the

defendant's competency is **GRANTED**;

(3) The trial of this case is set to commence at 9:00 a.m., on **July 28, 2009**, before the Honorable Thomas A. Varlan, United States District Judge;

(4) Discovery is due to the defendant by **May 29, 2009**,

(5) The motion-filing deadline in this case is **June 19, 2009**;

(6) Responses to any motions filed are due on or before **July 6, 2009**;

(7) The Court will hold a pretrial conference on **July 7, 2009, at 2:00 p.m.** This date is also the deadline for reciprocal discovery; and

(8) The plea cut-off deadline is **July 9, 2009**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge